IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.822 OF 2005
WITH
CRIMINAL APPLICATION NO.5701 OF 2005

Nitin @ Bittu Sudhakar
Sonawane & Ors. ..Appellants.

V/s.

The State of Maharashtra. ..Respondents.

Mr.S.M.Sabrad for appellants.

Mr.Y.S.Shinde, APP for State.

Mr.R.D.Suryawanshi for orig. Complainant.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 19, 2005.

P.C. :

1. Heard.

2. Admit. Taken up for hearing forthwith by consent.

3. Mr.Shinde, APP waives notice for the respondent-State. Mr.R.D.Suryawanshi appears for original complainant.

4. The appellants are convicted for offence punishable under section 341 and 307 r/w 34 of the I.P.Code and sentenced to undergo Rigorous

imprisonment for one month and pay fine of Rs.500/- in relation to the offence under section 341 r/w 34 of the I.P.C., rigorous imprisonment for 5 years and to pay fine of Rs.3,000/- for offence under section 307 r/w 34 I.P. Code.

5. The Original complainant and the appellants were friends and of tender age when the offence was committed. The incident in question took place on the spur of the moment. The original complainant and the appellants have now amicably settled all their disputes. Such affidavit has been filed by the original complainant. The original complainant has no intention to precipitate the matter. It is submitted that the appellants have already undergone sentence of around seven months. The appellants pray that they be set at liberty by reducing period of sentence already undergone following decision of the Apex Court in the case of **Salim & Ors. V/s. State of M.P. reported** in **1995 Supp.(4) SCC page 631**. In that decision it is observed that, which was also case of conviction under section 307 of I.P.C., the accused persons cannot be acquitted on the basis of compromise; However, following earlier decision in **Ram Pujan and ors. v/s. State of U.P.** the Apex court in the reported Judgment went on to observe

that in view of the compromise between the parties and all differences having been patched up, parties were living together happily- That subsequent development will be relevant with the question of sentence. The above said decisions of the Apex court were relied upon by this court in the case of **Sarjerao Shamrao Dhas v/s.State of Maharashtra 2003 (2) Mh.L.J. 235.** In other words, I am disposed of to accept the argument canvassed on behalf of the appellants which is supported by the complainant that while confirming the order of conviction, appellants be set at liberty on the basis of sentence already undergone in relation to the present offence. Learned APP submits that such course will meet ends of justice.

6. Accordingly, this appeal partly succeeds on the following terms.

(i) Order of conviction for offence punishable under section 341 and 307 r/w 34 of the I.P.C. is maintained.

(ii) The appeal partly succeeds only to extent of reducing sentence imposed by the lower court as referred to above to the one

already undergone by the appellants.

(iii) The appellants are set at liberty, if not required in other offence.

(iv) Bail bonds in respect of the present appeal stands cancelled.

7. Ordered accordingly.

8. In view of this order, nothing survives in the Criminal Application No.5701 of 2005. Disposed of accordingly.